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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JASON ALAN, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

VERENGO, INC.,
Defendant.

) Case No.

)

) **CLASS ACTION**

)

) **COMPLAINT FOR VIOLATIONS**

) **OF:**

)

) 1. NEGLIGENT VIOLATIONS
) OF THE TELEPHONE
) CONSUMER PROTECTION
) ACT [47 U.S.C. §227 ET
) SEQ.]

) 2. WILLFUL VIOLATIONS
) OF THE TELEPHONE
) CONSUMER PROTECTION
) ACT [47 U.S.C. §227 ET
) SEQ.]

)

) **DEMAND FOR JURY TRIAL**

)

)

Plaintiff JASON ALAN ("Plaintiff"), individually and on behalf of all
others similarly situated, alleges the following upon information and belief based

upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of VERENGO, INC. (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

JURISDICTION & VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a company which is incorporated in the State of Delaware. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Central District of California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a) because Defendant does business within the State of California and Plaintiff resides within the County of Los Angeles.

PARTIES

4. Plaintiff, Jason Alan (“Plaintiff”), is a natural person residing in Los Angeles County, California and is a “person” as defined by 47 U.S.C. § 153 (10).

5. Defendant, VERENGO, INC. (“Defendant”), is a residential solar company and is a “person” as defined by 47 U.S.C. § 153 (10).

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FACTUAL ALLEGATIONS

6. Beginning in or around June 24, 2015, Defendant contacted Plaintiff on his cellular telephone number ending in -7456, in an attempt to solicit Plaintiff Defendant's services.

7. Defendant used an "automatic telephone dialing system", as defined by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

8. Upon answering the telephone call from Defendant, Plaintiff hears an "artificial or prerecorded voice" as prohibited by 47 U.S.C. § 227(b)(1)(A).

9. Defendant contacted or attempted to contact Plaintiff from telephone number (925) 359-2443.

10. Defendant's calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

11. Defendant used an "automatic telephone dialing system", as defined by 47 U.S.C. § 227(a)(1) to place its daily calls to Plaintiff seeking to solicit Plaintiff Defendant's services.

12. Defendant's calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

13. Plaintiff is not a customer of Defendant's services and has never provided any personal information, including his cellular telephone number, to Defendant for any purpose whatsoever. Accordingly, Defendant never received Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

CLASS ALLEGATIONS

14. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member of the proposed class (hereafter "The Class") defined as follows:

1 All persons within the United States who received any
2 solicitation/telemarketing telephone calls from
3 Defendant to said person's cellular telephone made
4 through the use of any automatic telephone dialing
5 system or an artificial or prerecorded voice and such
6 person had not previously consented to receiving such
7 calls within the four years prior to the filing of this
8 Complaint

9 15. Plaintiff represents, and is a member of, The Class, consisting of All
10 persons within the United States who received any collection telephone calls from
11 Defendant to said person's cellular telephone made through the use of any
12 automatic telephone dialing system or an artificial or prerecorded voice and such
13 person had not previously not provided their cellular telephone number to
14 Defendant within the four years prior to the filing of this Complaint.

15 16. Defendant, its employees and agents are excluded from The Class.
16 Plaintiff does not know the number of members in The Class, but believes the
17 Class members number in the thousands, if not more. Thus, this matter should be
18 certified as a Class Action to assist in the expeditious litigation of the matter.

19 17. The Class is so numerous that the individual joinder of all of its
20 members is impractical. While the exact number and identities of The Class
21 members are unknown to Plaintiff at this time and can only be ascertained
22 through appropriate discovery, Plaintiff is informed and believes and thereon
23 alleges that The Class includes thousands of members. Plaintiff alleges that The
24 Class members may be ascertained by the records maintained by Defendant.

25 18. Plaintiff and members of The Class were harmed by the acts of
26 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
27 and Class members via their cellular telephones thereby causing Plaintiff and
28 Class members to incur certain charges or reduced telephone time for which
Plaintiff and Class members had previously paid by having to retrieve or

1 administer messages left by Defendant during those illegal calls, and invading the
2 privacy of said Plaintiff and Class members.

3 19. Common questions of fact and law exist as to all members of The
4 Class which predominate over any questions affecting only individual members
5 of The Class. These common legal and factual questions, which do not vary
6 between Class members, and which may be determined without reference to the
7 individual circumstances of any Class members, include, but are not limited to,
8 the following:

- 9 a. Whether, within the four years prior to the filing of this
10 Complaint, Defendant made any telemarketing/solicitation call
11 (other than a call made for emergency purposes or made with
12 the prior express consent of the called party) to a Class
13 member using any automatic telephone dialing system or any
14 artificial or prerecorded voice to any telephone number
15 assigned to a cellular telephone service;
- 16 b. Whether Plaintiff and the Class members were damages
17 thereby, and the extent of damages for such violation; and
- 18 c. Whether Defendant should be enjoined from engaging in such
19 conduct in the future.

20 20. As a person that received numerous telemarketing/solicitation calls
21 from Defendant using an automatic telephone dialing system or an artificial or
22 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
23 claims that are typical of The Class.

24 21. Plaintiff will fairly and adequately protect the interests of the
25 members of The Class. Plaintiff has retained attorneys experienced in the
26 prosecution of class actions.

27 22. A class action is superior to other available methods of fair and
28 efficient adjudication of this controversy, since individual litigation of the claims

1 of all Class members is impracticable. Even if every Class member could afford
2 individual litigation, the court system could not. It would be unduly burdensome
3 to the courts in which individual litigation of numerous issues would proceed.
4 Individualized litigation would also present the potential for varying, inconsistent,
5 or contradictory judgments and would magnify the delay and expense to all
6 parties and to the court system resulting from multiple trials of the same complex
7 factual issues. By contrast, the conduct of this action as a class action presents
8 fewer management difficulties, conserves the resources of the parties and of the
9 court system, and protects the rights of each Class member.

10 23. The prosecution of separate actions by individual Class members
11 would create a risk of adjudications with respect to them that would, as a practical
12 matter, be dispositive of the interests of the other Class members not parties to
13 such adjudications or that would substantially impair or impede the ability of such
14 non-party Class members to protect their interests.

15 24. Defendant has acted or refused to act in respects generally applicable
16 to The Class, thereby making appropriate final and injunctive relief with regard to
17 the members of the Class as a whole.

18 **FIRST CAUSE OF ACTION**

19 **Negligent Violations of the Telephone Consumer Protection Act**

20 **47 U.S.C. §227 et seq.**

21 25. Plaintiff repeats and incorporates by reference into this cause of
22 action the allegations set forth above at Paragraphs 1-24.

23 26. The foregoing acts and omissions of Defendant constitute numerous
24 and multiple negligent violations of the TCPA, including but not limited to each
25 and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

26 27. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et
27 seq., Plaintiff and the Class Members are entitled an award of \$500.00 in
28 statutory damages, for each and every violation, pursuant to 47 U.S.C. §

1 227(b)(3)(B).

2 28. Plaintiff and the Class members are also entitled to and seek
3 injunctive relief prohibiting such conduct in the future.

4 **SECOND CAUSE OF ACTION**

5 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
6 **Act**

7 **47 U.S.C. §227 et seq.**

8 29. Plaintiff repeats and incorporates by reference into this cause of
9 action the allegations set forth above at Paragraphs 1-24.

10 30. The foregoing acts and omissions of Defendant constitute numerous
11 and multiple knowing and/or willful violations of the TCPA, including but not
12 limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et*
13 *seq.*

14 31. As a result of Defendant's knowing and/or willful violations of *47*
15 *U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of
16 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47*
17 *U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

18 32. Plaintiff and the Class members are also entitled to and seek
19 injunctive relief prohibiting such conduct in the future.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

22 **FIRST CAUSE OF ACTION**

23 **Negligent Violations of the Telephone Consumer Protection Act**

24 **47 U.S.C. §227 et seq.**

- 25 • As a result of Defendant's negligent violations of *47 U.S.C.*
26 *§227(b)(1)*, Plaintiff and the Class members are entitled to and
27 request \$500 in statutory damages, for each and every violation,
28 pursuant to *47 U.S.C. 227(b)(3)(B)*.

- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 25th Day of September, 2015.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff